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BY HAND DELIVERY

Docket Management Facility
(USCG-1998-3884)
U.S. Department of Transportation
Room PL-401
400 Seventh Street, SW
Washington, DC 20590-0001

RE: USCG-1998-3884 – Deepwater Port NPRM

USCG-1998-3884-15

Dear Sir or Madam:

BOOTS, LLC, working in conjunction with Hogan and Hartson and Ecology and Environment, Inc., is pleased to provide the attached comments to the Department of Transportation United States Coast Guard Notice of Proposed Rulemaking for Deepwater Ports. BOOTS, LLC, a wholly owned subsidiary of Unocal Corporation, is a potential applicant for a deepwater port license to develop and operate the Bulk Oil Offshore Transport System ("BOOTS") in the Gulf of Mexico. As a result of its ongoing efforts to prepare the deepwater port application materials, BOOTS, LLC is in a unique position to offer guidance on the proposed revision of the deepwater port regulations.

BOOTS, LLC strongly suggests that the primary focus of the revision of the deepwater port regulations should be to *encourage the development of additional deepwater ports*, which can be achieved by continuing to reduce the regulatory burden and by increasing flexibility for both applicants and licensees. Streamlining the deepwater port regulations in order to encourage the development of additional deepwater ports is consistent with the President's National Energy Policy and the activities of the Energy Task Force to expedite the licensing of major energy projects that will enhance the nation's energy security. BOOTS, LLC supports the Coast Guard's ongoing efforts to revise the deepwater port regulations, and believes the proposed revisions would significantly update the regulations and exclude unnecessary requirements. BOOTS, LLC recommends several additional revisions, however, which it believes are needed in order to achieve the Congressional mandate of the Deepwater Port Act amendments. BOOTS, LLC believes that its recommended changes to the Coast Guard's proposed revision will

improve the regulatory framework for both applicants and licensees, thereby fostering the development of additional deepwater ports.

In the attached comments, BOOTS, LLC addresses several opportunities that exist for improving the deepwater port regulations and reducing the regulatory hurdles to deepwater port development. These opportunities include, but are not limited to the following:

- Coast Guard should provide a mechanism for facilitating coordination with consulting agencies to more efficiently utilize the expertise and resources of other agencies and to reduce the possibility that agencies with overlapping authority will needlessly perform multiple reviews.
- In view of the significant progress made in understanding the marine environment since the enactment of the Deepwater Port Act and the substantial amount of reliable field data available, Coast Guard should clarify an applicant's ability to reference and rely on existing data to satisfy several information requirements in the application.
- The regulations should allow for the submission of detailed engineering data following the presentation of the license application but prior to construction and should permit reliance on specified codes and industry standards in the license application, thus reducing the pre-licensing costs.
- Given the 1996 amendments to the Deepwater Port Act and the substantial changes in industry in the past two decades, Coast Guard should reduce the scope of commercial information required in the application materials, particularly for applicants who are not refiners and who would need to rely on information already available in the public domain in order to fulfill the current burdensome information requirements.
- Consistent with streamlining initiatives by the Department of Transportation and other federal agencies, the deepwater port regulations should authorize advanced NEPA scoping meetings so that the Coast Guard and a license applicant have a better idea of the issues that should be addressed by an environmental assessment.
- The environmental monitoring requirements for operating deepwater ports should be limited, particularly in those areas where it is clear that such monitoring is already taking place in connection with other offshore activities.

In addition to the above recommendations, the attached comments also suggest several detailed revisions that are needed to update the regulations in accordance with the revised Deepwater Port Act.

BOOTS, LLC looks forward to working with Coast Guard in the near future and will be available at any point to discuss the attached comments or the BOOTS project. Requests for information or further discussions should be addressed to: Mr. Michael Wilems, BOOTS, LLC, 14141 Southwest Freeway, Sugar Land, Texas 77478, Phone: 281-287-7491, Fax: 281-287-7331, E-mail: michael.wilems@unocal.com.

We thank you for all of your assistance thus far and for your commendable efforts at undertaking the important task of revising the deepwater port regulations. Please do not hesitate to contact Mr. Wilems if you require any additional information.

Sincerely,

James T. Banks
On behalf of BOOTS, LLC

Enclosure

cc: Commander Mark Prescott
Mike Wilems, Vice President, BOOTS, LLC
Chris Keene, President, BOOTS, LLC

Comments on the Department of Transportation United States Coast Guard Notice of Proposed Rulemaking for Deepwater Ports

33 CFR Parts 148, 149 & 150

[USCG-1998-3884]

Submitted on Behalf of the

Bulk Oil Offshore Transport System ("BOOTS")

by

BOOTS, LLC
a wholly owned subsidiary of Unocal Corporation

September 18, 2002

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INTRODUCTION

BOOTS, LLC is pleased to submit these comments in response to the Department of Transportation ("DOT") United States Coast Guard Notice of Proposed Rulemaking ("NPRM"), published at 67 Fed. Reg. 37,919 (2002), soliciting public comments on the proposed revisions to the deepwater ports regulations, as required by the 1996 Deepwater Ports Modernization Act (Pub. L. No. 104-324).

BOOTS, LLC—a wholly owned subsidiary of Unocal Corporation ("Unocal")—is a potential applicant for a license to construct and operate a deepwater port facility in the Gulf of Mexico. Unocal is one of the world's leading natural gas and crude oil production companies. The company's principal oil and gas operations are in North America, Asia, Latin America, the North Sea and West Africa. Unocal enjoys a major presence in the Gulf of Mexico, established through persistent exploration and operating excellence over the course of 50 years. Through its wholly owned subsidiaries, Unocal has interest in thousands of miles of pipelines worldwide that transport crude oil, refined petroleum products, and natural gas. In addition, Unocal is the owner and operator of the Beaumont Terminal, which is an onshore oil terminal located on the Texas Gulf Coast that connects to a network of pipelines in the Gulf region as well as to the U.S. Strategic Petroleum Reserve.

The Bulk Oil Offshore Transfer System ("BOOTS") is a proposed deepwater port designed to enhance the nation's energy infrastructure by providing safe and efficient transmission of crude oil to refineries in Texas and Louisiana. As currently

proposed, BOOTS will be capable of receiving crude oil from tankers of various sizes, including fully loaded very-large crude-carriers ("VLCCs"). BOOTS will enhance the efficient transportation of domestic crude oil, as it will be able to facilitate transmission of deepwater Gulf of Mexico resources. In addition, BOOTS will provide an economical alternate delivery point for oil from Western Hemisphere sources such as Mexico and South America.

As a result of our ongoing efforts to prepare the deepwater port application materials for BOOTS and to pursue the authorizations from various agencies that must be consulted under the Deepwater Port Act ("DWPA"), BOOTS, LLC is well aware of the need for revision of the deepwater port regulations and appreciates the Coast Guard's efforts in undertaking such a considerable and demanding task.

As the Coast Guard has recognized, revision of the deepwater port regulations is needed in order to (1) update the regulations with current technology and industry standards; (2) exclude unnecessary and burdensome requirements; (3) create consistency with regulations for other fixed offshore facilities; and (4) improve the competitiveness of licensed deepwater ports and encourage the development of additional deepwater ports. *See* 67 Fed. Reg. 37,921. As a potential applicant and developer of a deepwater port in the Gulf of Mexico, BOOTS, LLC feels strongly that the primary focus of the deepwater port regulatory revisions should be to *encourage the development of additional deepwater ports*. Currently, the Louisiana Offshore Oil Port ("LOOP") is the only licensed deepwater port in the United States. Additional deepwater ports would contribute significantly to

achievement of the President's National Energy Policy objective of meeting the nation's energy needs in an environmentally responsible manner. Yet, since LOOP's licensing in 1977 several companies, such as Petroport, Inc.,[1] have considered and ultimately abandoned the prospect of developing a deepwater port, in part due to the complex and overly burdensome regulatory requirements. Given that it has been 25 years since a deepwater port was licensed and developed, the Coast Guard's current revision of the deepwater port regulations must focus on encouraging the development of additional deepwater ports by reducing the regulatory burden on applicants and licensees.

This regulatory revision should not only meet the Congressional objectives set forth in the 1996 Deepwater Ports Modernization Act to streamline licensing requirements and encourage port development; it also should represent a major accomplishment in this Administration's implementation of its National Energy Policy. In May, 2001, the Administration released its National Energy Policy report, which outlined the critical national goal of promoting dependable, affordable and environmentally sound energy supplies for the economic and strategic security of the nation. The report emphasized the importance of improving the country's energy transportation infrastructure, improving refinery capacity, and enhancing energy security. *See* NATIONAL ENERGY POLICY at 7-14 to 7-18. Of particular note,

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[1] *See* Petroport, Inc., *Comments on the Advanced Notice of Proposed Rulemaking regarding Deepwater Ports*, USCG-1998-3884-5 (October 14, 1997) (hereinafter Petroport Comments) (describing Petroport as a potential deepwater port developer off the coast of Texas).

the report identified delays in permitting as one of the obstacles to achieving those goals and recommended that the President issue an executive order to ensure that important energy-related projects do not get mired in layers of bureaucracy and overlapping or inconsistent regulations.

Shortly after the National Energy Policy was released, the President issued Executive Order 13212, titled "Actions to Expedite Energy-Related Projects," which requires federal agencies to expedite review of permits or take other actions to accelerate the completion of projects that "will increase the production, transmission or conservation of energy." Exec. Order No. 13212 § 1, *published at* 66 Fed. Reg. 28,357 (2001). The Order also established an interagency task force to monitor and assist agencies in their efforts to expedite such projects, and their efforts to coordinate federal, state, tribal and local permitting in geographic areas where increased permitting activity is expected. *See id.* § 3. The Energy Task Force will work with and monitor federal agencies, and help the agencies coordinate federal, state and local permitting. This will be accomplished through an approach that "facilitates interagency coordination and addresses impediments to federal agencies' completion of decisions about energy-related projects." 66 Fed. Reg. 43,587 (2001).

Through these proposed deepwater port regulatory revisions, Coast Guard has the opportunity to complement and support the important work of the Energy Task Force in implementing Executive Order 13212. In the discussion below, we provide a number of suggestions and recommendations for specific regulatory

revisions that will assist Coast Guard in meeting that objective and thereby facilitating future deepwater port development. Specifically, Section I below offers support for a number of Coast Guard's proposed revisions and addresses additional revisions that are necessary to reduce the regulatory burden on applicants. Section II recommends several policy revisions and clarifications that would further achieve the mandates of the Deepwater Ports Modernization Act by encouraging the development of additional deepwater ports and promoting innovation, flexibility, and efficiency of licensed ports. Finally, Section III suggests detailed revisions that are needed to update the deepwater port regulations and exclude obsolete and unnecessary requirements.

I. REDUCING THE REGULATORY BURDEN ON APPLICANTS FOR A DEEPWATER PORT LICENSE

A. Support for Proposed Revisions to Existing Deepwater Port Regulations

As a potential applicant, BOOTS, LLC would like to express its strong support for Coast Guard's efforts to streamline the deepwater port regulations and to reduce the regulatory burden on deepwater port applicants and licensees. The proposed rulemaking makes significant progress toward satisfying the goals of the 1996 Deepwater Ports Modernization Act, including updating the deepwater port regulations and assuring that the regulations are not more burdensome or stringent than necessary.

1. Creating Consistency with Offshore Facilities

We agree with the Coast Guard's efforts to make deepwater port requirements consistent with those for other offshore facilities. Given the similarities between certain components of a deepwater port and other types of offshore facilities, as well as the oil industry's significant experience with a variety of offshore facilities, alignment with the Outer Continental Shelf ("OCS") regulations, as proposed at 64 Fed. Reg. 68,416 (1999), is entirely appropriate. In particular, the proposed deepwater port regulations refer to the proposed OCS regulations for standards on life saving equipment (33 C.F.R. § 149.305) and fire fighting and protection equipment (33 C.F.R. Part 149, Subpart D). While we may not agree with the Coast Guard's assessment of costs of the proposed OCS regulations, we do agree and support consistency of the standards for deepwater ports with those for similar offshore facilities.

In addition, we would encourage the Coast Guard to continue to pursue further alignment of deepwater port requirements with current industry practices and federal regulations for similar offshore facilities that transfer oil or hazardous materials in bulk ("OHMB facilities"). Coast Guard's proposal to align deepwater port regulations with requirements for OHMB facilities that may be applicable, especially similar requirements of the Minerals Management Service ("MMS") in the Department of the Interior, aptly recognizes that "similarities exist in areas of cargo transfer operations, communications and operations manuals." 67 Fed. Reg. 37,921. We also would add that similarities between deepwater ports and other

offshore facilities, including facilities regulated by MMS, exist in both the design and construction area and in the logistics of choosing a port location and evaluating the surrounding environment. We would encourage Coast Guard to take advantage of MMS' extensive experience in the environmental assessment, design and construction, and operation of offshore facilities that are very similar to deepwater ports.

Drawing on the expertise of other agencies such as MMS can be accomplished effectively by authorizing applicants to devise interagency coordination mechanisms during the pre-application phase, as suggested below in Section II.A.1. When so authorized, applicants could propose informal or formal agreements between Coast Guard and the Maritime Administration ("MARAD") and other consulting agencies such as MMS. The Secretary of Transportation would then have the ability to review, revise and approve the recommended arrangements. Such a policy would maintain flexibility and provide applicants with the ability to obtain regulatory certainty prior to submitting the application materials. Coordination with other agencies during the pre-application time frame will help ensure that Coast Guard can review and approve an application for a deepwater port within the required and expedited deadline of the DWPA (i.e., a little less than a year) despite the existence of competing duties and a lack of resources.

2. Efforts to Streamline and Update the Regulations

In at least three broad areas, the deepwater port NPRM takes major strides toward streamlining and updating the requirements for deepwater port applicants and licensees.

First, the transfer of several requirements to the Operations Manual aids both in streamlining the regulations and in increasing flexibility for licensees and applicants. In particular, the NPRM proposes to transfer requirements for weather monitoring (former 33 C.F.R. § 150.123), oil transfers (former 33 C.F.R. § 150.413), and stopping transfer operations (former 33 C.F.R. § 150.419), among others, to the Port Operations Manual. We strongly support this change, as these features of operations are likely to be highly site-specific in nature, requiring individual, customized approaches by port operators. Moreover, as discussed in Section I.B.2.b below, we believe that Coast Guard's objective of providing a streamlined, flexible licensing process would be further enhanced by deferring the need to prepare a detailed, approvable Operations Manual until after the siting and design aspects of the proposed port have been approved.

Second, we support removal of the reference to the outdated "Guide to Preparation of Environmental Analysis for Deepwater Ports," as it eliminates a substantial and unnecessary requirement that had come to be seriously out of step with modern practices in preparing Environmental Impact Statements ("EISs"). NEPA documentation is more appropriately informed by comprehensive guidance established by the Council on Environmental Quality ("CEQ"). The CEQ guidance

provides an efficient, logical process for EIS preparation, and it is essential that an applicant's Environmental Analysis be structured similar to a modern EIS.

Finally, we applaud the Coast Guard's effort to update several references to industry design and construction standards, as this also provides flexibility and modernizes the requirements. In particular, we support updating the references to the American Petroleum Institute ("API") recommended practices for design standards in proposed section 33 C.F.R. § 149.625(b) for load and stress factors, and in 33 C.F.R. § 149.625(f) for heliports. We would encourage Coast Guard, as discussed in Section III.B.10 below, to consider updating additional references to reflect more contemporary API recommendations.

3. Reducing Regulatory Burdens and Increasing Flexibility

BOOTS, LLC also supports the proposed revisions that reduce regulatory burdens and delete unnecessary regulations. Specifically, we agree with removal of burdensome information requirements, proposed at 67 Fed. Reg. 37,921. Some of these items were a concern in the 1970s, such as the information required on Petroleum Administration Districts, as well as financial and technical information required for antitrust review, but are no longer addressed by the DWPA. In addition, we agree with efforts to reduce the regulatory burden by increasing applicants' and licensees' flexibility, such as by allowing the Captain of the Port ("COTP") to approve certain amendments to a licensee's Operations Manual, proposed at 33 C.F.R. § 150.30.

B. Additional Revisions Needed in Order to Reduce Regulatory Burdens

Additional revisions to the regulations should be considered that would further reduce the regulatory burden on applicants and encourage the development of deepwater ports. We believe these revisions can be made while still requiring the submission of environmental, design, construction, and operational information that is sufficient for the Secretary's consideration and approval of a license application.

The broad and, in some cases, vague language of the current application requirements appears to demand a significant financial investment from an applicant that might not be necessary at the application-development stage. Requiring extremely costly studies, field surveys, detailed design and construction projections and other technical undertakings—prior to approval of a proposed route and port location—imposes an expensive and precarious burden on potential applicants. Changes to the route or location of a proposed deepwater port pursuant to the licensing process easily could render early field surveys, studies or projections submitted with an application obsolete, requiring applicants to duplicate their considerable, pre-application efforts.

Accordingly, we propose that the regulations in 33 C.F.R. Part 148 be re-structured so as to eliminate or defer significant expenditures that are unnecessary for demonstrating a project's threshold sufficiency under the DWPA. More specifically, we propose the following suggestions: (1) eliminating the outmoded requests for baseline field data in the application; (2) deferring costly

data gathering by imposing data-development license conditions that must be met prior to construction and operation; and (3) removing overly burdensome and impractical information requirements pertaining to an applicant's construction contracts.

The Secretary has clear authority under the DWPA to issue regulations that structure the licensing procedures in any manner that results in a rational, efficient process. The Act authorizes the issuance of regulations "to carry out the purposes and provisions of this chapter," and further authorizes the Secretary "to amend or rescind any such regulation." 33 U.S.C. § 1504(a). Given the Act's strong mandate, re-emphasized in the 1996 amendments, to facilitate and expedite port development, and especially in light of the substantial scientific and engineering progress that has taken place since these regulations were first promulgated, we believe Coast Guard has a solid foundation for implementing the specific suggestions set forth below.

1. Eliminate Outdated and Burdensome Requests for Field Data

We propose that Coast Guard clarify the deepwater port regulations to specify that information on baseline conditions, with respect to which suitable data may already exist, need not be gathered by original field work, except where existing data clearly are insufficient. We suggest that clarification to the following sections in the NPRM will ease the regulatory burden on applicants and streamline Coast Guard's review of deepwater port applications, without sacrificing the quality

of information provided or hindering the Secretary's ability to make the requisite determinations under the DWPA.

(a) Environmental data (at 33 C.F.R. §§ 148.105(i), (w) & (z))

Coast Guard should clarify and emphasize the applicant's ability to make maximum use of existing environmental data that are readily available from reliable sources and that satisfy the information needs of the Coast Guard and consulting agencies. For example, the many Environmental Assessments ("EA") and EISs prepared for oil and gas lease sales sponsored by the MMS, as well as for other deepwater development activities, provide a wealth of recent and reliable information on the marine environment in the Gulf of Mexico. Confirmation of an applicant's ability to use such information is consistent with the NPRM's removal of the 1975 guidance document on the preparation of the EA, which imposed outdated and burdensome information gathering requirements that were thought to be necessary, nearly three decades ago, due to the lack of knowledge of baseline conditions in the marine environment. Clearly, industry and Coast Guard have become much more knowledgeable since 1975 and there appears to be no rational basis for requiring applicants to "reinvent the wheel," at their own expense.

Accordingly, we propose addition of the following language to § 148.105(w) regarding the Environmental Impact Analysis:

> "Pre-existing literature and data obtained from credible sources may be used to the extent that it is applicable for representing existing conditions in the study area. Collection of raw data may be

> necessary where the available pre-existing information is not sufficient for representing existing conditions in the study area. The source and any apparent limitations of information used for characterizing the existing environment must be identified."

To eliminate ambiguity and delay, the regulations also could authorize a mechanism through which an applicant could coordinate with the Coast Guard and other agencies, such as MMS, CEQ and the Environmental Protection Agency ("EPA"), to determine the acceptability of specific data. For example, prior to submittal of the application materials, an applicant could submit to Coast Guard and other relevant agencies an outline of data sources and how they will be used. This would give the agencies an opportunity to consult with each other, inform the applicant as to whether these data sources are likely to be sufficient, identify additional sources that may have been omitted, and, most important, advise the applicant as to whether additional data gathering appears to be necessary prior to submission of the application. Such a procedure would eliminate surprises, streamline application review and quite possibly shorten the timeline for application development.

We also propose inserting the following underscored language into § 148.105(i), regarding Clean Water Act requirements, to make it consistent with the requirements of § 148.105(z), regarding the National Pollutant Discharge Elimination System, by adding in § 148.105(i)(1):

> "Evidence, <u>to the extent available</u>, that the requirements of section 401(a)(1) of the Federal

Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1341(a)(1), will be satisfied. If complete information is not available by the time the Secretary must either approve or deny the application under 33 U.S.C. 1504(i)(1), the license for the deepwater port is conditioned upon the applicant demonstrating that the requirements of section 401(a)(1) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1341(a)(1), will be satisfied."

(b) Reconnaissance hydrographic survey and chartered water depths (33 C.F.R. § 148.105(m)(2) & (3))

Similarly, the regulations should be revised to clarify that applicants are allowed to use existing data to satisfy the application requirements for marine site components and hydrographic surveys. Since the drafting of the deepwater port regulations, a great deal of information concerning baseline marine conditions, particularly for the Gulf of Mexico, has become available in published scientific literature, governmental databases, and previously completed EISs. Currently, data on relatively homogenous and predictable aspects of the environment are readily available. Consequently, we propose that Coast Guard define a "reconnaissance hydrographic survey" to permit the use of existing data, gathered within a reasonably current time frame, which may be supplemented by field data for locations in which a high degree of variability may exist. Together with the consultation mechanism, described above, this flexibility and clarity would go a long way toward producing an efficient process for application development.

In addition, the geographical scope of section 148.105(m) needs to be clarified. Since the definition of "marine site" has been removed, it is now

unclear as to what portions of the application area will require charted water depths and hydrographic surveys. As discussed below in Section III.A.2, we suggest continuing to include "marine site" as a defined term in 33 C.F.R. § 148.5.

(c) Soils data (33 C.F.R. § 148.105(n))

As suggested for environmental and marine site components, we propose that Coast Guard clarify that "[a]n analysis of the general character and condition of the ocean bottom, sub-bottom, and upland soils throughout the marine site" can be based on applicable existing data, except where soils are highly variable. This proposal again is consistent with other actions taken by Coast Guard in the NPRM to update and streamline the deepwater port regulations. Much is known about the soil conditions in U.S. waters, especially for areas such as the Gulf of Mexico, which have a prevalence of pipeline construction. Accordingly, we propose to insert the following underscored language into the second sentence in section 148.105(n): "The analysis <u>may be based on and utilize existing data, except for locations in which soils are known to be highly variable, and</u> must include an opinion by a registered professional . . . ."

(d) Archeological survey data (33 C.F.R. § 148.415)

With respect to the gathering of archeological survey data, we propose that Coast Guard clarify the regulations in order to (1) elaborate on the probable need to submit archeological data with the application materials (i.e., perhaps in the EA); and (2) allow for the use of existing data, except for certain portions of the OCS where high-resolution geophysical surveys may be warranted,

as suggested by MMS. We note that 33 C.F.R. § 148.415 addresses archeological data for potential applicants performing site-evaluations. Currently, archeological data are not required to be submitted with the application materials specified in 33 C.F.R. § 148.105. Given that archaeological information is a significant component of the surrounding environmental conditions and that the submission of archeological information to the Coast Guard was a post-licensing condition in LOOP's deepwater port license, we suggest that Coast Guard address whether an applicant should submit such information in the application materials. It may be that a new sub-section in 33 C.F.R. § 148.105 will be needed. In addition, to avoid ambiguity and place applicants on notice, Coast Guard should clarify whether satisfaction of MMS requirements are sufficient in federal waters.

2. Defer Costly Data Gathering to Post-Licensing Conditions

Given that much detailed and site-specific information submitted in the application materials for a deepwater port will be subject to some degree of change—through the suggestion of the Coast Guard, DOT, other federal or state agencies, and Governors of adjacent coastal states—it would be more efficient, less burdensome and in keeping with the goals of the NPRM, for Coast Guard to permit applicants to defer some of the most expensive financial investments, and to satisfy these requirements as post-licensing conditions to be completed prior to approval of actual construction or operation.

(a) Engineering and Construction Data and Projections

Coast Guard should clarify engineering and construction specifications that must be met prior to licensing, and should indicate that certain specifications may be provided as post-licensing conditions. This suggestion is consistent with some of the environmental requirements of the NPRM, such as in sections 148.105(i) & (z), which allow an applicant to submit preliminary information sufficient for Coast Guard's review and to defer final certification as post-licensing conditions.

With regard to providing engineering and construction data at the application stage, an applicant should be required to commit to meeting all defined codes and standards set forth in 33 C.F.R. Part 149 (and associated referenced documents) for design, environmental protection, safe operation and integrity of all structures and systems and to incorporating these standards in its Operations Manual. At the same time the Coast Guard should recognize that the application does not and cannot contain detailed engineering or final design specifications. Such site-specific, detailed information will need to be completed as a condition of operation. Of course, any significant deviation from an applicant's proposed routing or from the structural concepts contained within the application will need to be approved by the Secretary before construction of a deepwater port begins.

(b) Operations Manual Completion

The detail associated with the Operations Manual portion of the application (§ 148.105(v) & § 150.10) should be limited to those items that are required to demonstrate the applicant's ability to operate the port. Final approval of the complete, detailed Operations Manual should be a condition to operation, *after* detailed design of the port is complete. A preliminary version of the Operations Manual should be submitted with the application, and should outline what will be in the final draft that is later submitted for review and approval.

Additionally, 33 C.F.R. § 148.105(v) should be clarified to permit applicants to reference other offshore operations and compliance with MMS requirements for offshore facilities in the draft Operations Manual in order to demonstrate compliance experience or satisfy relevant information requirements. Clearly, neither BOOTS, LLC nor Unocal have operated a deepwater port, however, Unocal has significant offshore operation experience and has demonstrated its oil spill response readiness to the Coast Guard in the past. Most recently, in May 2002, Unocal sponsored an oil spill joint training exercise under the MEXUS Plan.[2] Along with Coast Guard, the Mexican Navy and the Texas General Land Office, Unocal successfully simulated the containment and clean-up of an underwater leak of 9,000 barrels of crude oil in the Gulf of Mexico.[3] *See* Materials at Attachment A. Such

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[2] *See* United States Coast Guard, Press Release, *U.S. Coast Guard and Mexican Navy Joint Operation* (May 18, 2002), *available at* http://www.uscg.mil/d8.

[3] *See* Anthony Caskey, THE BROWNSVILLE HERALD, *Officials: Simulated oil spill exercise a success* (May 31, 2002).

experience could greatly assist Coast Guard in determining an applicant's ability to operate a deepwater port and should be referenced in an applicant's draft Operations Manual.

3. Revise Information Requirements for Construction Contracts to be Consistent with Similar Changes in the NPRM

To reduce the regulatory burden on the applicant and promote consistency, we suggest that Coast Guard revise and re-word 33 C.F.R. § 148.105(h), *Construction contract and studies*, to make information requirements for installation contractors parallel with requirements for information on design firms. Accordingly, this section could be revised to require an applicant to submit:

> "(i) The identity of each installation contractor, if known, that will install the deepwater port or a portion of the port, including the firm's
> a. Name
> b. Address;
> c. Citizenship;
> d. Telephone number; and
> e. Qualifications.
> (ii) In addition, applicants should provide, to the extent available, key information pertaining to contracts with any named contractors that may be pertinent to the success of the application."

We also suggest that copies of final contracts not be required prior to licensing. It is highly probable that, in the ordinary course of business, contracts would not be finalized prior to submission of the application.

In addition, we propose that Coast Guard limit the scope of "studies on deepwater ports" and "all other related" studies required by § 148.105(h). This

language is unclear, yet broad, and could refer to studies other than construction studies. We suggest that Coast Guard specify that this section requires only ***construction-related*** studies.

II. OPPORTUNITIES FOR ADDITIONAL POLICY CHANGES CONSISTENT WITH DEEPWATER PORT ACT AMENDMENTS

A. Additional Suggestions for Encouraging the Construction of Deepwater Ports by Continuing to Improve the Regulatory Framework and the Procedures for License Application

1. Provide Opportunity for Formalized Coordination Among Coast Guard and Consulting Agencies

In order to facilitate coordination and maximize the efficient use of agency resources, we recommend that Coast Guard add regulatory language that would allow applicants to propose mechanisms for coordination and division of responsibility among federal and state agencies. DOT would review and approve proposed coordination mechanisms, and thereafter the license development process would move forward according to the approved mechanism. Dozens of federal, state and local authorities must be consulted, pursuant to a variety of environmental regulations and other programs, in the preparation and processing of a license application. With respect to many aspects of a project, these authorities' jurisdiction and interests overlap considerably. The applicant needs an efficient process by which these authorities can consult with each other and provide dependable, unambiguous answers to myriad questions and issues. Contradictory opinions and, above all, second-guessing must be minimized if this licensing process is to move forward expeditiously. Accordingly, we strongly encourage the Coast

Guard to implement a new procedure by which applicants can take the lead in creating a reliable consultation mechanism, subject of course to the Secretary's approval.

We propose to insert a new sub-section, at 33 C.F.R. § 148.110(b) (which would shift the current sub-section (b) to (c)), that would read as follows:

> "(b) A potential applicant who provides a letter of intent to apply for a deepwater port license may propose, either through a formalized mechanism, such as a Memorandum of Understanding, or an informal exchange of letters, a means of coordination and/or division of responsibility among consulting agencies for review of specific portions of the application materials. If the Secretary determines, based on the letter of intent, that the applicant is sufficiently advanced in preparing for application submittal to warrant the implementation of such a mechanism, the Secretary will review and approve or deny the proposed coordination mechanism, with or without appropriate revisions, within 45 days."

This suggestion attempts to balance Coast Guard's responsibility for implementing the deepwater port regulations (despite significantly limited resources and competing mandates) with the need for applicants to understand clearly which functions are assigned to particular agencies with regards to the application review, design and construction of the port, and the operation of the port. In addition, the opportunity for applicants to propose a specific division of responsibility recognizes that over time the Coast Guard and MARAD may be hard pressed to complete the review and approval of multiple deepwater port applications, unaided, within the required time frame specified by the DWPA.

Through this mechanism, Coast Guard would be able to coordinate with and delegate responsibilities to other agencies so as to complete the expedited review of deepwater port applications in accordance with the deadlines in the DWPA.

The NPRM, at § 148.3, does not delineate the responsibilities of the various consulting agencies that are described in the DWPA. This is understandable given that expertise with development of the various components of offshore facilities may shift among agencies over time, and given the dramatic shifts in Coast Guard priorities and responsibilities since the events of September 11. It is important that divisions of responsibility be kept flexible, and yet they must be ascertainable to potential applicants. For example, a potential applicant may wish to propose an MOU between Coast Guard and MMS designating responsibility to MMS for review of specific design and construction standards aspects of the project on which MMS has significant expertise.[4] Or, in a series of letters exchanged, an applicant may request Coast Guard to notify MMS of the need to reserve surface use of the OCS blocks proposed for use by the applicant, or to ask MMS to run an Oil Spill Risk Analysis for the site of the proposed deepwater port.

Similarly, the regulations should be more specific and helpful regarding the necessity of coordinating the review and approval of permits for the

[4] In some cases, Coast Guard may wish to develop a rulemaking, which would formalize a delegation of responsibility to another agency such as MMS. Such formal delegation occurred this year when Coast Guard authorized MMS to perform inspections on and enforce compliance with Coast Guard regulations on fixed facilities engaged in OCS activities. *See* 67 Fed. Reg. 5,912 (Feb. 7, 2002).

onshore components of the project with the review and approval of the DWPA license for offshore components. Because the DWPA definition of a deepwater port is ambiguous with respect to permitting of onshore components, it is prudent to conclude that separate federal permits—outside the DWPA license—will be necessary. Even so, the Secretary has clear authority to cause such separate permitting procedures to be closely coordinated with the DWPA licensing process so that environmental assessments, public participation and agency decision making can occur simultaneously for all aspects of the project. The Act provides that "[a]n application filed with the Secretary shall constitute an application for all federal authorizations required for ownership, construction, and operation of a deepwater port." 33 U.S.C. § 1504(e)(2) (emphasis added). Onshore components clearly are necessary for operation of a port, and even if they are not defined as a component of the port, it would appear that the Secretary has the necessary authority to cause other federal agencies to process their permit approvals for onshore components within the context and time frame of the DWPA licensing proceeding. We therefore urge the Coast Guard to clarify and provide for this coordination in the revised DWPA regulations.

2. Clarify Standards and Procedures for Additional Information Requests

To eliminate ambiguity and provide fair notice to applicants, Coast Guard should clarify the guidelines and procedures that DOT will use to consider requests for additional information under § 148.108. This section requires that an

agency or other interested person who makes such a request must explain the need for the information (§ 148.108(b)), but does not otherwise indicate the basis on which the Coast Guard will decide whether to grant the request. In addition to requiring a clear and compelling need for such information, we believe the regulations should explicitly provide for consideration of other important criteria, as well as the balancing of such criteria against the asserted need for the information. Additional criteria should include: (1) the likely cost to the applicant of providing the information; (2) the likelihood of delay in the licensing process in view of the time needed to assemble the information; (3) whether the requester can obtain the information, or meet the asserted need, in some alternative fashion; and (4) whether the question to be answered by the information is central to fulfilling the Secretary's responsibilities under the DWPA prior to license issuance.

In addition, the regulations should provide that the Commandant will consult with the applicant prior to issuing a determination on such requests. This will enable the applicant to present its views concerning the relevant decision-making criteria for the Coast Guard's consideration.

3. Clarify Requests for Additional Application Fees

The new regulations addressing the application fee, at § 148.125(b), state that the applicant would be liable for "further processing costs" above the $350,000 processing fee, but do not provide a limit to the extent of these costs or an accounting of expenditures that would enable the applicant to review past actions and future needs before additional costs are imposed. We suggest that the Coast

Guard clarify this provision to ensure that: (1) applicants will be advised in advance and able to review all costs associated with the $350,000 processing fee; (2) application review costs will not be open ended; and (3) the need for additional assessments will be explained and justified. The proposed application fee of $350,000 represents a significant increase over the original amount of $100,000. Given the increased fee and the significant cost of preparing the necessary application materials, it is only fair that an applicant would be informed of what costs are involved in the application approval process, both before the application is filed and as the processing costs are incurred.

In addition, to promote efficiency and reduce the regulatory burden, Coast Guard should permit an applicant to assist, where appropriate, in gathering information or in other portions of the review process to help defray some of the application review costs. An applicant should be afforded the opportunity to either perform some of the work itself or to hire consultants acceptable to the Coast Guard.

Finally, we also would recommend imposing a maximum amount that the Coast Guard can request to process an application. An entirely open-ended processing fee is unusual, especially for energy related projects,[5] and offers potential

[5] Based on Unocal's experience in operating offshore facilities and onshore pipelines, neither the MMS nor the Federal Energy Regulatory Commission impose open-ended licensing or certification fees. *See, e.g.*, 30 C.F.R. § 250.1010 ("MMS periodically will amend the filing fee based on its experience with the costs for administering pipeline right-of-way applications" and if the costs change by a certain percentage then the change will be accompanied by notice and an opportunity for comment); 18 C.F.R. Part 381 (containing fees for FERC regulated entities); 18 C.F.R. §§ 4.301-4.303 (requiring consulting agencies such as Fish and

applicants no sense of regulatory certainty. Such a lack of certainty *discourages* the development of additional deepwater ports, particularly since the surrender of the already significant application fee provides no assurance that the applicant will be granted a license or that the fee is likely to cover anticipated review costs.

4. Authorize Advanced NEPA Scoping

Consistent with several contemporary movements within DOT and CEQ, we propose that Coast Guard add regulatory language to the deepwater port regulations that authorizes and provides a mechanism for holding advanced scoping meetings pursuant to the requirements of the National Environmental Policy Act ("NEPA"). We propose inserting an additional section, 33 C.F.R. § 148.223, into the subpart on public meetings, which would authorize an applicant to hold scoping meetings, consistent with NEPA guidelines, prior to submitting its application. An applicant could request to hold advanced scoping meetings in a letter of intent to file a deepwater port license application. In order to formalize advanced NEPA scoping meetings, Coast Guard or a designated agency official representing the Secretary of Transportation would need to attend and participate in any scoping meetings held by a potential applicant.

This mechanism would allow commencement of the NEPA review and documentation process in advance of application submission. This important concept is consistent with the Coast Guard's objective of streamlining

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Wildlife to submit reasonable cost estimates of review and approval of an application).

environmental requirements for deepwater ports, authorized by existing NEPA guidance, and consistent with the purposes of Executive Order 13212, discussed above.

Advanced NEPA scoping would provide valuable feedback to applicants at the critical point in time in which input from the public could be most effectively incorporated into project development. Scoping meetings typically are held in the vicinity of proposed projects to brief the public and receive suggestions as to the scope of the issues that must be addressed and the nature of the analysis that must be provided in the final EIS. If this occurs after application submission, the applicant's Environmental Analysis will have been completed without the benefit of public scoping and any new, legitimate issues that arise would require supplementation or perhaps even significant revision of the EA resulting in costly delays. Moreover, even if new issues are not raised, the scoping process itself typically adds three to four months to the EIS development effort.

To avoid these issues, upon receipt of an applicant's letter of intent, the Coast Guard should authorize commencement of the scoping process. Such an expedited, streamlined scoping process not only advances the letter and spirit of NEPA for facilitating early public involvement, but also supports the goals of the President's Executive Order and the National Energy Policy. Indeed, CEQ guidance on NEPA implementation specifically endorses advanced scoping procedures. *See* CEQ, 40 FAQs, Answer No. 13.

5. Reduce the Amount of Commercial Information Required

As discussed, Coast Guard has successfully removed several onerous requests for information from deepwater port applicants that were originally associated with antitrust concerns and that were eliminated by the 1996 Deepwater Port Modernization Act. Clearly, Coast Guard has a legitimate need for financial information, as required by the DWPA at 33 U.S.C. § 1504(c)(2)(i), on the overall financial capacity of an applicant to conduct and complete the development of a deepwater port. As noted by Petroport, the DWPA only requires applicants to provide "limited data on refineries that plan to receive crude oil from the deepwater port, including (1) identification, location and capacity of each such facility and (2) the anticipated volume of such oil to be refined to the extent known." Petroport Comments at 7; *see also* DWPA, 33 U.S.C. § 1504(c)(2)(h). The financial information requirements that remain in 33 C.F.R. § 148.105(g), particularly in § 148.105(g)(4) &(5), however, far exceed the scope of information sought by the DWPA. We agree with Petroport that the financial information requirements are overly burdensome, particularly for an applicant that is only a shipper or transporter and not a refiner. Accordingly, we suggest that these financial information requirements at § 148.105(g), particularly in subsections (g)(4) &(5), be removed and replaced with the straight-forward requirement from the DWPA at 33 U.S.C. § 1504(c)(2)(h).

Similarly, 33 C.F.R. § 148.105(s), requires burdensome data on onshore components, the need for which was eliminated with the removal of the antitrust concerns from the DWPA. The information required in § 148.105(s)(3), namely

throughput reports from an applicant and its affiliates, is particularly onerous and is doubly so for an applicant that is purely a shipper or transporter and is not engaged in refining. The scope of products for which throughput reports are required by § 148.105(s)(3) (e.g., gasoline, jet fuel, etc.) also is overly broad and seems rooted in the historical concerns about competition that have not materialized. Accordingly, we agree with Petroport that the requirements of § 148.105(s), particularly for subsection § 148.105(s)(3), should be eliminated. *See* Petroport Comments at 9-10.

Alternatively, if the data requirements of § 148.105(s) are not eliminated, then Coast Guard should limit the data required to those facilities *reasonably expected to receive services* from the proposed port. Currently, the language of § 148.105(s) is somewhat vague and could be broadly interpreted. Coast Guard should clarify that, for a port that is designed to transport crude oil, data on other products, such as gasoline, jet fuel and distillates, are not needed.

6. Limit the Scope of Sensitive Business Information that May be Required as "Additional Information"

The information required by 33 C.F.R. § 147.107(b) does not seem to support Coast Guard's need to assess the financial strength of an applicant. Rather, this section seems to be rooted in the antitrust concerns of the 1970s, which have been eliminated from the statute. Requiring an applicant to identify and make available such sensitive information as listed in § 147.107(b) is overly burdensome and unnecessary. The Coast Guard may already request any necessary

commercial information under 33 C.F.R. § 148.107(a). Accordingly, we suggest that § 147.107(b) be removed.

B. Suggestions for Promoting Innovation, Flexibility, and Efficiency in the Management of Deepwater Ports by Continuing to Clarify and Streamline Regulations

1. Adopt a Timeframe on Monitoring of Baseline Environmental Conditions

In order to achieve consistency with the requirements for other offshore facilities, we propose that Coast Guard limit the duration of the environmental monitoring program required by the Operations Manual, 33 C.F.R. § 150.15(o), to a reasonable timeframe. We also believe that consideration should be given to eliminating the requirement altogether, as suggested by Mr. Dale Hutchinson in his comments on the Advanced Notice of Proposed Rulemaking.[6] An ongoing environmental monitoring program is not required by MMS for similar offshore oil and gas production facilities and transportation pipelines with equal or greater potential for environmental impacts. Thus, deepwater ports are placed at a competitive disadvantage compared to other oil transportation options.

Currently, § 150.15(o) requires the "periodic re-examination of the physical, chemical, and biological factors contained in the port's environmental impact analysis and baseline study submitted with the license application." This requirement for continuous reassessments of the baseline environment, particularly

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[6] *See* Letter from Dale. L. Hutchinson to Marine Safety Counsel, United States Coast Guard 3 (Sept.29, 1997), at USCG-1998-3884-2 (hereinafter Hutchinson Comments).

in intervals of 5 years or less, is excessive, burdensome, and contrary to the intent of the 1996 Deepwater Port Modernization Act. The language of this provision appears to have originated in the 1970s, as did the now obsolete guidance document on the preparation of the EA, when little was known about the baseline conditions of the marine environment or the extent of risk associated with offshore facilities and pipelines, and when data gathering was one of the primary goals of the program. As properly noted by Petroport and Hutchinson, the activities of federal and state agencies, as well as academic institutions, result in constant review of marine environmental conditions, particularly in the Gulf of Mexico, and much more is now known about the low impact of offshore facilities, including deepwater ports. *See* Petroport Comments at 23-24; Hutchinson Comments at 3. Today, the requirement for a licensee to continually monitor environmental conditions, and for the Coast Guard to be responsible for ensuring such monitoring takes place, wastes valuable resources without providing a tangible benefit.

Accordingly, we propose to eliminate the second sentence in § 150.15(o) entirely, and to insert language that reads:

> "In the event of the occurrence of extreme, environment-altering conditions, the environmental monitoring program should provide for the re-examination of the affected environmental factors as contained in the Environmental Analysis submitted with the license application."

2. Clarify or Delete the Requirements for Discharge and Containment Equipment

It appears that Coast Guard may have unintentionally preserved the requirements for specific quantities of discharge containment and removal material and equipment that used to be located at 33 C.F.R. § 149.319 and are now included at 33 C.F.R. § 149.103. In the preamble to the proposed regulations, Coast Guard stated that the Agency agreed with the comment that the discharge containment and removal requirements in § 149.319 were already covered in the facility response plan required by the Oil Pollution Act of 1990 ("OPA 90"), at 33 C.F.R. Part 154, and accordingly Coast Guard "removed the pollution response equipment requirements found in §§ 149.319, 150.407, and 150.409." 67 Fed. Reg. 37,922. We suggest that Coast Guard remove the response equipment requirements now located at § 149.103(a),(b) & (c), as those requirements are already addressed by OPA 90 regulations that apply to deepwater ports. Instead, § 149.103 should simply clarify that compliance with OPA 90 regulations at 33 C.F.R. Part 154 Subpart F satisfies the response equipment requirements.

Lastly, given that EPA has recently released a final rule on spill prevention control and countermeasure ("SPCC") requirements,[7] Coast Guard could use this opportunity to clarify for deepwater port applicants and licensees that satisfaction of OPA 90 requirements and preparation of a facility response plan

[7] *See* 67 Fed. Reg. 47,042 (July 17, 2002).

("FRP") fulfills the SPCC requirements under the Clean Water Act. Such clarifying language could be inserted into § 149.103.

III. SUGGESTIONS FOR DETAILED REVISIONS STILL NEEDED TO UPDATE REGULATIONS AND EXCLUDE UNNECESSARY REGULATIONS

A. Definitions

1. Define "Hydrographic survey"

Adding a definition of the term "hydrographic survey" that is used in 33 C.F.R. § 148.105(m) would assist applicant's in meeting the requirements for submission of a complete application, and would ensure that Coast Guard receives an adequate description of the marine site conditions. In addition, § 148.105(m) uses the terms "reconnaissance hydrographic survey" and "engineering hydrographic survey." From the context of these provisions it appears that an "engineering hydrographic survey" is intended to be more detailed than the initial "reconnaissance" survey, but this relative description provides insufficient guidance. Precise and comprehensive definitions of these terms would ensure that the requirements are met and would provide potential applicants with "fair notice" of what is expected.

In defining these terms, Coast Guard should emphasize that the use of existing, reliable information is encouraged, and that original fieldwork need not be undertaken unless it is essential to an adequate understanding of marine conditions. Moreover, to the extent that costly data gathering may be required, we urge Coast

Guard to allow applicants to undertake these tasks pursuant to license conditions, as discussed above.

2. Reinstate "Marine site"

Given that 33 C.F.R. §§ 148.105(m) & (n) still utilize the term "marine site," Coast Guard should continue to define the term so that the geographic scope of the requirements is ascertainable by potential applicants.

3. Omit "Production District"

The proposed revisions have deleted the use of the term "Production District" from the regulations. Therefore, the term should be removed from 33 C.F.R. § 148.5(b).

B. Additional Clarifications to Proposed Regulations

1. 33 C.F.R. § 148.105(o)(3)

In order to make the regulations more precise and eliminate uncertainty in the regulated community, § 148.105(o)(3) could be revised as follows: "A detailed description of the ~~manner~~ methods used to ~~for~~ forecast~~ing~~ the wind, wave, and current conditions . . . ."

2. 33 C.F.R. § 148.105(r)(iv)

To avoid confusion, the references to "depth" of the marine pipeline in § 148.105(r)(iv) should be clarified. References should specify "depth of cover."

3. 33 C.F.R. § 148.105(s)(2)

This section is unclear as written. We recommend that § 148.105(s)(2) be revised as follows: " A chart showing the location of planned and existing facilities that will be served by the port, including . . . ."

4. 33 C.F.R. § 148.108(c)

To be consistent with other timing provisions in the regulations, the language in § 148.108(c) should read "within 30 days after publication of the notice of application in the Federal Register." In addition, Coast Guard should specify the required timing of the Commandant's response to a request for information.

5. 33 C.F.R. §§ 148.276-.277

Sections 148.276-.279 would be more clear and comprehensive if the timing requirements of the DWPA approvals, in 33 U.S.C. § 1504, were specified and referenced. Such specification would help to put the general public, other federal and state agencies, and potential adjacent states on notice of the expeditious and condensed time frame in which the Secretary of Transportation must review and approve or deny a license application. In addition, in 33 C.F.R. § 148.277, Coast Guard should clearly indicate that adjacent coastal states must respond within a given amount of time, i.e., within 45 days of the last public hearing, and if the deadline is missed, approval will be conclusively presumed pursuant to the DWPA § 1508(b)(1).

6. 33 C.F.R. § 148.305(d)(1)

Section 148.305(d)(1) currently conflicts with the intention of the NPRM to create flexibility for licensees and to allow the COTP to approve minor revisions to a deepwater port's Operations Manual. This section should be clarified to acknowledge that the COTP may make certain interpretations of, and adjustments to, a deepwater port Operations Manual.

7. 33 C.F.R. § 148.610

In order to provide clear and fair notice to potential applicants, § 148.610 should be clarified to explain how LOOP's liability cap was derived, and how the cap for future deepwater ports will be determined. We suggest that this section be renamed and reworded to apply to all deepwater ports, and that specific deepwater ports be listed in subsections (obviously LOOP will be the only one at the moment).

8. Appendix A Part II(a)(10)

The language in Appendix A Part II(a)(10)—setting forth the prohibition on locating deepwater port components in areas where sediments have high levels of heavy metals or other pollutants—is overly burdensome, inflexible and may unnecessarily eliminate otherwise suitable marine environments. Currently, this section reads: "Pipelines, or other deepwater port components or facilities requiring dredging should not be located where sediments with high levels of heavy metals, biocides, oil or other pollutants or hazardous materials exist."

Rather than serving as a general prohibition, this language should be rephrased to require special practices in situations where heavy metals or other pollutants are present. Including the following underscored language (or similar language) would provide flexibility, while maintaining the high environmental standard originally intended:

> "To the extent possible, pipelines, or other deepwater port components or facilities requiring dredging should not be located where sediments with high levels of heavy metals, biocides, oil or other pollutants or hazardous materials exist. If such location is necessary, due to geographic concerns, financial impracticability, or in order to minimize adverse environmental impacts, best management practices, approved by the Coast Guard, should be utilized to minimize adverse environmental impacts."

9. Appendix A Part II(c)

Currently, Appendix A Part II(c) requires that "A deepwater port should not conflict with existing or planned land use, including management of the coastal region." The language in Appendix A Part II(c), regarding conflicts with existing land uses, is very broad and could be construed to refer to any existing land use, including uses that are environmentally inferior. The scope of this requirement should be limited to conflicts that adversely impact the environment. We recommend inserting the following underscored language or similar language to this provision: "To the extent possible, a deepwater port should not conflict with existing or planned land use, including management of the coastal region, unless the deepwater port will confer substantial environmental benefits to the region."

10. 33 C.F.R. § 149.625

In keeping with the efforts to update the regulations and create consistency with other offshore facilities, § 149.625 should be revised to allow designers to use API RP 14F, API RP 14FZ, API RP 500, and API RP 505 as substitutes or alternatives to USCG's shipboard electrical requirements. Most designers for offshore installations use API technical standards for developing electrical designs for fixed offshore facilities; therefore, such a revision would make the design of deepwater ports consistent with similar offshore facilities.

C. Suggested Exclusions of Unnecessary Regulations

1. 33 C.F.R. § 148.105(q)(5)

Section 148.105(q)(5), pertaining to any studies performed on any fixed offshore component, should be removed because it is addressed by the abstract required under § 148.105(h)(2)(i) & (ii). This revision would be consistent with the Coast Guard's removal of a similar requirement for studies on floating components that is currently required by now-codified 33 C.F.R. § 148.109(m)(5).

2. 33 C.F.R. § 150.720

Currently § 150.720 requires fog signals to be sounded when the visibility is "less than 5 miles." This requirement is overly burdensome and inconsistent with mariners' consideration of restricted visibility. The section should be revised to require a visibility of considerably less than 5 nautical miles before fog signals must be sounded.

D. Proposed Re-organization of Requirements

1. 33 C.F.R. § 148.105(g)

As already suggested in Section II.A.5 above, several financial information requirements should be eliminated. However, if these requirements remain, then the requirements for information on proposed total refinery capacity, currently requested in *Financial Information* at § 148.105(g), should be moved to *Data on Onshore Components* at § 148.105(s)(3). Section 148.105(s) is more appropriate for information on refinery capacity, as it contains other similar information. If the financial information requirement is not eliminated, re-organization will at least improve the reviewability of application materials and help to minimize delay in licensing.

2. 33 C.F.R. § 148.105(s)(3)

Similarly, the requirements for "throughput reports" information, currently requested in *Data on Onshore Components* at § 148.105(s)(3), should be moved to *Financial Information* at § 148.105(g), if they are not eliminated entirely as suggested above in Section II.A.5. Section 148.105(g) contains other types of financial information similar to "throughput reports." If the production of throughput reports is not eliminated as suggested above, then re-organization of this requirement will aid swift review of application materials.

3. 33 C.F.R. § 148.105(o)(3)

The description of the manner of forecasting conditions for operations, currently required by § 148.105(o)(3), could be moved to the *Operations Manuals* requirements at § 150.15(g), where such descriptions would better expand on the port's operating limits. This proposed re-organization would be consistent with Coast Guard's attempts to transfer relevant requirements to the *Operations Manuals* provisions. *See* 67 Fed. Reg. 37,921.

4. 33 C.F.R. § 148.105(y)

To continue streamlining and updating the regulations, the requirements pertaining to telecommunications equipment, at § 148.105(y), could be combined with the section pertaining to communication and radar navigation systems in § 148.105(t).

E. Minor Corrections

1. 33 C.F.R. § 148.105(s)

The cross-reference to subsection "(cc)" in § 148.105(s) needs to be updated or removed, as it is not applicable and non-sequitor. The material referred to may have been moved to sections 148.107 and/or 148.108.

2. 33 C.F.R. § 148.252(a)

The typographical error in the first sentence of § 148.252(a) should be corrected. Perhaps this section was intended to read, "A party may submit . . . ."

CONCLUSION

BOOTS, LLC supports Coast Guard's efforts thus far to revise and update the deepwater port requirements and reduce the regulatory burden on applicants and licensees. BOOTS, LLC would like to encourage Coast Guard to take this opportunity to support the important work of the Energy Task Force in implementing the National Energy Policy and to further streamline the deepwater port regulatory framework. As discussed above, several additional policy revisions and clarifications can be made to further reduce the regulatory burden on applicants and foster the development of additional deepwater ports that will enhance the nation's energy security. We urge Coast Guard to seize this opportunity and to continue to improve and advance the regulations addressing the licensing, design and construction, and operation of deepwater ports.

Attachment A

Unocal's Partnership under the MEXUS Plan

HILL & KNOWLTON
THE BROWNSVILLE HERALD
Fri., May 31, 2002

Officials: Simulated oil spill exercise a success

Safety: Measure designed to improve joint reaction to disasters.

It appears while this might seem to be a minor accomplishment, it has been rare for joint U.S.-Mexico land-based notification exercises to be completely successful.

BY ANTHONY CASKEY
THE BROWNSVILLE HERALD

SOUTH PADRE ISLAND — Mexican and American officials reportedly notified each other successfully during Thursday's first-ever joint Mexico-U.S. oil spill exercise, a U.S. Coast Guard official said.

The exercise simulated how U.S. and Mexican agencies along with an oil company would work together to contain and clean up an underwater leak of 9,000 barrels of crude oil from exploration operations in the Gulf of Mexico.

The simulated leak occurred May 16, and American and Mexican officials that day successfully notified each other of the development, U.S. Coast Guard Capt. William Wagner said.

It appears while this might seem to be a minor accomplishment, it has been rare for joint U.S.-Mexico land-based notification exercises to be completely successful.

For example, U.S. Environmental Protection Agency Official Fendol M. Chiles said at a U.S.-Mexico Joint Response Team Meeting earlier this month said that only one of about 12 notification exercises with which he had been affiliated over the last 10 years from Del Rio to Brownsville was completely successful.

Mexican and American officials on Wednesday and Thursday demonstrated what they would do to clean up the simulated leak on the 13th and 14th days after the leak occurred, Wagner said.

The oil slick was modeled to hit an area of the coast stretching 40 miles north and 40 miles south of the Rio Grande, Unocal Vice President Deepwater U.S.A. Mike Bell said, whose company helped sponsor the exercise.

The slick was not modeled to have hit the coastline by the 13th and 14th days of the exercise.

Hundreds of American and some Mexican officials on Thursday were clustered around tables in a hotel conference room working on either the finance, logistics, operations or planning of the simulated accident, Texas General Land Office Deputy Land Commissioner Greg Pollock said.

Today, the American and Mexican participants are scheduled to meet to discuss lessons learned from the exercise.

HILL & KNOWLTON
THE BROWNSVILLE HERALD

U.S., Mexico stage joint exercise

By ANTHONY CASKEY
The Brownsville Herald

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